

August 7, 2018

MEMORANDUM FOR THE WHITE HOUSE STAFF SECRETARY AND CABINET SECRETARY

FROM: Ryan Jackson, Chief of Staff, U.S. Environmental Protection Agency

SUBJECT: Environmental Protection Agency 90-Day Look Ahead for the Week of August 6, 2018

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**A. Events/Travel**

- **July 16** – Travel to Western Pennsylvania (natural gas company, local chamber of commerce, Western Pennsylvania Conservancy, interview w/*Pittsburgh Post-Gazette*)
- **August 13** – Travel to Des Moines, IA
- **August 17** – Travel to Detroit, MI (Great Lakes and water infrastructure events, EPA Ann Arbor Office)
- **August 27** – Travel to Columbus and Zainesville, OH
- **September 7-8** – Travel to Butte, Montana (Superfund site, tribes)
- **September 10** – Travel to Denver (Superfund site, EPA Detroit Office)
- **September 14-16** – Camp David retreat
- **September 17-20** – G7 Environmental Ministers meeting
- **October 3-5** – Travel to West Coast (EPA San Francisco Office, EPA Seattle Office, Portland Harbor Superfund site, speaking engagement with American College of Environmental Lawyers)
- **October 15/16** – Speaking engagement with Louisiana Association of Business and Industry, RESTORE Counsel Meeting on the Gulf Coast)
- **October 19** – Event in Richmond, VA (mercury switch MOU)

**B. Top News**

- **Make Cars Great Again** (*Wall Street Journal*, 8/1/2018): “During a visit to Detroit last year, President Trump announced his administration would assess and correct the current vehicle fuel-economy standards, which impose significant costs on American consumers and eliminate jobs. The administration is continuing to deliver on that promise. On Thursday the Transportation Department and Environmental Protection Agency are announcing a joint proposal to update the national automobile fuel-economy and greenhouse-gas standards to give consumers greater access to safer, more affordable vehicles, while continuing to protect the environment.”
- **Trump Admin Encourages States To Take Over Water Permitting** (*Politico*, 8/7/18): “The Army Corps of Engineers and EPA are encouraging states to take over their controversial Clean Water Act permitting program and are boosting their process for allowing them to do so.”

**C. Policy Updates**

1. **GREENHOUSE GAS STANDARDS FOR LIGHT-DUTY VEHICLES:** In April 2018, Administrator Pruitt announced the start of a joint process with the National Highway Traffic Safety Administration (NHTSA) to develop a notice and comment rulemaking to set GHG emissions standards and Corporate Average Fuel Economy (CAFE) standards for light-duty vehicles model years 2021-2026. On August 1, the agencies issued a joint proposed seeking

public comment on a range of regulatory options, including a preferred alternative that locks in Model Year 2020 standards through 2026.

**Timing:** Comments will be due 60 days after the proposed rule is published in the Federal Register.

**Contact:** Bill Wehrum, Office of Air and Radiation, [Wehrum.Bill@epa.gov](mailto:Wehrum.Bill@epa.gov)

2. **SUPERFUND EMPHASIS LIST:** On December 8, 2017, EPA released an initial Superfund Emphasis List of Superfund sites in response to the Superfund Task Force Recommendations. On April 16, EPA released an updated Emphasis List. On August 3, EPA released the next revision of the list to remove eight sites: Centredale Manor Restoration Project, American Cyanamid Co., Ventron/Velsicol, Delaware Sand & Gravel Landfill, B.F. Goodrich, Mississippi Phosphates Corporation, Allied Paper, Inc./Portage Creek/Kalamazoo River, and Casmalia Resources.

**Timing:** EPA anticipates revising the list quarterly.

**Contact:** Nick Falvo, [Falvo.Nick@epa.gov](mailto:Falvo.Nick@epa.gov)

3. **CLEAN POWER PLAN:** Consistent with Executive Order 13783, in March 2017, Administrator Pruitt announced EPA's review of the Clean Power Plan (CPP). In October, EPA issued a proposed rule to repeal the CPP. On December 18, EPA issued an Advanced Notice of Proposed Rulemaking (ANPRM) on a potential rule that would establish emission guidelines for states to establish performance standards for GHG emissions from existing Electric Generating Units (EGUs). On June 9, EPA sent a proposed rule revising the CPP to OMB. EPA is keeping its proposed CPP repeal open and will consider the public comments submitted on both proposals.

**Timing:** EPA plans to issue the June 9 proposed rule in August.

**Contact:** Mandy Gunasekara, Office of Air and Radiation, [Gunasekara.Mandy@epa.gov](mailto:Gunasekara.Mandy@epa.gov)

4. **OIL AND GAS NSPS:** Consistent with Executive Order 13783, in April 2017, Administrator Pruitt announced EPA's reconsideration of several aspects of the 2016 oil and gas New Source Performance Standards (NSPS). On March 1, 2018, EPA amended two provisions of the 2016 oil and gas NSPS to address immediate concerns with the fugitive emission requirements. On April 27, EPA sent a reconsideration proposed rule to OMB.

**Timing:** EPA plans to issue the proposed rule in August.

**Contact:** Mandy Gunasekara, Office of Air and Radiation, [Gunasekara.Mandy@epa.gov](mailto:Gunasekara.Mandy@epa.gov)

5. **TSCA FEES:** Under the amended TSCA, EPA is required to institute new fees on the chemical manufactures to fund the approval program for new chemicals. On February 8, 2018, EPA issued a proposed Fees Rule to provide funding for Lautenberg Act implementation, including risk evaluations and reviewing CBI.

**Timing:** EPA plans to send a final rule to OMB in late August before issuing the rule in September.

**Contact:** Nancy Beck, Office of Chemical Safety and Pollution Prevention, [Beck.Nancy@epa.gov](mailto:Beck.Nancy@epa.gov)

6. **DEFINITION OF "WATERS OF THE UNITED STATES":** Consistent with Executive Order 13778, EPA and the U.S. Army Corps of Engineers are taking a multi-step approach to

reconsider the jurisdictional scope of the Clean Water Act. The agencies issued a proposed rule to withdraw the 2015 “Waters of the United States” (WOTUS) rule and re-codify the status quo in June 2017 and issued a supplemental notice seeking additional public comment in July 2018. In January 2018, the agencies issued a final rule to change the applicability date of the 2015 rule to February 2020. Lastly, the agencies are developing a revised definition of WOTUS, which was proposed in a rule sent to OMB for interagency review on June 15, 2018.

**Timing:** Comments on the supplemental notice are due August 13, 2018. EPA plans to issue the proposed rule revising the definition of WOTUS in September.

**Contact:** Dave Ross, Office of Water, [Ross.DavidP@epa.gov](mailto:Ross.DavidP@epa.gov)

7. **LEAD AND COPPER RULE:** EPA is beginning the process of updating the Lead and Copper Rule (LCR) for drinking water to modernize and strengthen implementation of the rule. The LCR was first promulgated in 1991 and has not been substantially revised since that time. On January 8, 2018, EPA held its first federalism consultation meeting with stakeholders representing intergovernmental associations.

**Timing:** EPA plans to issue a proposed rule in September.

**Contact:** Dave Ross, Assistant Administrator, Office of Water, [Ross.DavidP@epa.gov](mailto:Ross.DavidP@epa.gov)

8. **PSD/NSR PROJECT AGGREGATION:** Under the New Source Review (NSR) preconstruction permitting program, stationary sources undergoing modifications need to determine whether their physical or operational changes are a “major modification” based on the emissions increase that would result from the changes. The term “project aggregation” within the NSR program refers to the grouping of related physical and/or operational changes at a facility into a single project and combining the corresponding emission increases or decreases for purposes of determining NSR applicability. In January 2009, the EPA finalized an interpretation of existing NSR regulations that changes at a facility should be aggregated into a single project if they are “substantially related.” This 2009 action is currently under reconsideration.

**Timing:** EPA plans to issue a final reconsideration rule in September.

**Contact:** Bill Wehrum, Office of Air and Radiation, [Wehrum.Bill@epa.gov](mailto:Wehrum.Bill@epa.gov)

9. **COAL COMBUSTION RESIDUALS:** In response to petitions for rulemaking from the utility industry, EPA decided in September 2017 to reconsider provisions of the final 2015 rule regulating the disposal of coal combustion residuals (CCR) as nonhazardous waste in light of the issues raised in the petitions and the Water Infrastructure Improvements for the Nation Act (WIIN Act), which includes provisions authorizing state regulatory programs and providing EPA new oversight authority. EPA issued a proposed rule to modify several provisions of the 2015 CCR rule to respond to a June 2016 voluntary remand (“remand rule”). In addition to the specific issues subject to the remand, EPA has drafted additional proposed changes to the CCR rule as part of the remand rule to address many of the issues stakeholders raised in their petitions. On March 1, 2018, Administrator Pruitt proposed the first of two rules (Phases 1 and 2) that amend the 2015 CCR rule. On July 17, EPA issued the Phase 1 partial final rule.

**Timing:** EPA plans to send a Phase 2 proposed rule to OMB in September.

**Contact:** Byron Brown, [Brown.Byron@epa.gov](mailto:Brown.Byron@epa.gov)

10. **RFS VOLUME STANDARDS FOR 2019 AND BBD FOR 2020:** On June 26, EPA issued a proposed rule under the Renewable Fuel Standards (RFS) program that would set the minimum

amount of renewable fuels that must be supplied to the market in 2019, as well as the biomass-based diesel (BBD) volume standard for 2020.

**Timing:** Comments are due August 17, 2018. EPA plans to send a final rule to OMB in September before issuing the rule in October.

**Contact:** Mandy Gunasekara, Office of Air and Radiation, [Gunasekara.Mandy@epa.gov](mailto:Gunasekara.Mandy@epa.gov)

- 11. RISK MANAGEMENT PROGRAM:** The original Risk Management Program (RMP) rule was issued in 1996, and has been modified 5 times. The prior administration issued a rule to amend the RMP regulations that raised concerns related to national security, inconsistencies with the Process Safety Management (PSM) standards issued by OSHA, and unnecessary burdens on local communities. In March 2017, Administrator Pruitt granted reconsideration of the RMP rule in response to petitions from two industry groups and one from a group of states and issued a 90-day administrative stay of the rule. In June, EPA published a final rule to further delay the effective date of the rule until February 19, 2019. On May 17, EPA issued a reconsideration proposed rule. The proposed rule: (1) rescinds requirements for third-party audits, STAA, root cause analysis; (2) revises the requirements for local coordination and emergency exercises; (3) rescinds requirements for information availability while strengthening provisions that require a public meeting after an incident; and (4) extends compliance dates.

**Timing:** On July 24, EPA published a Federal Register notice of data availability (NODA) extending the comment period from July 30 to August 23. EPA plans to send a final rule to OMB in October.

**Contact:** Steven Cook, Office of Land and Emergency Management, [Cook.Steven@epa.gov](mailto:Cook.Steven@epa.gov)

- 12. COST-BENEFIT REFORM:** On April 10, 2018, Administrator Pruitt announced a forthcoming Advanced Notice of Proposed Rulemaking (ANPRM) to consider proposing regulations on cost-benefit reform. Under the Obama administration, EPA used questionable methods, like the social cost of greenhouse gases and relying on “co-benefits,” to inflate the purported benefits of its regulations and underestimate the true costs (as in the case of the Clean Power Plan). Additionally, several EPA statutes refer to the calculation of costs and benefits, but implementation has been inconsistent. This has led to EPA creating uncertainty for the regulated community. On June 7, EPA issued an ANPRM to solicit public input on whether and how to change the way it considers costs and benefits.

**Timing:** On July 3, EPA published a Federal Register notice extending the comment deadline for the proposed rule from July 13 to August 13.

**Contact:** Brittany Bolen, Office of Policy, [Bolen.Brittany@epa.gov](mailto:Bolen.Brittany@epa.gov)

- 13. SCIENCE TRANSPARENCY:** Consistent with Executive Orders 13777 and 13783, in April 2018, Administrator Pruitt signed a proposed rule to strengthen the science used in regulations issued by EPA. The rule would ensure that the regulatory science underlying agency actions is fully transparent, and will require that the underlying scientific information be publicly available, in a manner sufficient for independent validation. This action builds upon prior EPA actions in response to government-wide data access and sharing policies, as well as the experience of other federal agencies in this space.

**Timing:** On May 24, EPA published a Federal Register notice extending the comment deadline for the proposed rule from May 30 to August 16.

**Contact:** Richard Yamada, Office of Research and Development, [Yamada.Richard@epa.gov](mailto:Yamada.Richard@epa.gov)

**14. DUST-LEAD AND LEAD-BASED PAINT:** In 2009, EPA was petitioned to lower dust-lead hazard standards and modify the definition of lead-based paint. On December 27, 2017, the Ninth Circuit granted a petition for writ of mandamus to compel EPA to issue a proposed rule by March 27, 2018. On March 26, EPA received a 90-day extension to issue a proposed rule by June 24. On June 22, EPA issued a proposed rule to change the dust-lead hazard standards from 40 µg/ft<sup>2</sup> and 250 µg/ft<sup>2</sup> to 10 µg/ft<sup>2</sup> and 100 µg/ft<sup>2</sup> on floors and window sills, respectively. In addition, EPA is proposing to make no change to the definition of lead-based paint because the Agency currently lacks sufficient information to support such a change.

**Timing:** Comments are due August 16, 2018.

**Contact:** Nancy Beck, Office of Chemical Safety and Pollution Prevention,  
[Beck.Nancy@epa.gov](mailto:Beck.Nancy@epa.gov)

**15. PSD/NSR PROJECT EMISSIONS ACCOUNTING:** Under the New Source Review (NSR) preconstruction permitting program, sources undergoing modifications need to determine whether their modification is considered a major modification and thus subject to NSR preconstruction permitting. A source owner determines if its source is undergoing a major modification under NSR using a two-step applicability test. The first step is to determine if there is a “significant emission increase” of a regulated NSR pollutant from the proposed modification (Step 1) and the second step is to determine if there is a “significant net emission increase” of that pollutant (Step 2). EPA plans to issue a rule that would consider emissions increases and decreases in Step 1.

**Timing:** EPA plans to send a proposed rule to OMB in October.

**Contact:** Bill Wehrum, Office of Air and Radiation, [Wehrum.Bill@epa.gov](mailto:Wehrum.Bill@epa.gov)

#### **D. Grants**

**1. \$266,034 TO THE SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT:** This grant allows the State of Idaho to maintain an air quality program that meets the requirements of the federal Clean Air Act, to include plans and programs designed to achieve or maintain compliance with the National Ambient Air Quality Standards (NAAQS), conformity analysis, compliance with National Emission Standards for Hazardous Air Pollutants (NESHAPS) rules and regulations, stationary source compliance, emission inventory development, data collection, reporting and modeling.

**Timing:** EPA will issue a press release on August 8.

**2. \$217,516 TO THE IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY:** This grant allows the State of Idaho to maintain an air quality program that meets the requirements of the federal Clean Air Act, to include plans and programs designed to achieve or maintain compliance with the National Ambient Air Quality Standards (NAAQS), conformity analysis, compliance with National Emission Standards for Hazardous Air Pollutants (NESHAPS) rules and regulations, stationary source compliance, emission inventory development, data collection, reporting and modeling.

**Timing:** EPA will issue a press release on August 8.

3. **\$253,210 TO THE COOK COUNTY (ILLINOIS) DEPARTMENT OF ENVIRONMENTAL CONTROL:** The Cook County Department of Environmental Control (DEC) will continue monitoring activities to support the Illinois Environmental Protection Agency's Section 105 air pollution control program. Cook County DEC will maintain and operate a gaseous air monitoring network in Cook County, Illinois.  
**Timing:** EPA will issue a press release on August 8.

**E. Legal Actions**

1. **STATE OF WEST VIRGINIA, ET AL. v. EPA, NO. 15-1363 (D.C. CIR.) – CLEAN POWER PLAN – CONTINUED ABEYANCE:** On April 28, 2016, the *en banc* court issued an order holding the litigation challenging the Clean Power Plan in abeyance and instructing the parties to file briefs on the question of whether the case should remain held in abeyance or whether the court should remand the rule to the Agency. On May 15, 2017, DOJ requested that the court hold the case in abeyance pending EPA's review of the rule. The rule's supporters have asked the court to remand the rule to EPA. On August 8, 2017, the D.C. Circuit ordered that the case remain in abeyance. The court directed EPA to continue to file status reports. The case remains in abeyance, and EPA continues to file status reports. EPA filed its most recent status report on July 26.  
**Timing:** On June 26, 2018, the Court ordered that the case remain in abeyance for another 60 days, and that EPA file status reports every 30 days.  
**Contact:** Matthew Leopold, General Counsel, [Leopold.Matt@epa.gov](mailto:Leopold.Matt@epa.gov)
2. **OHIO VALLEY ENVIRONMENTAL COALITION v. PRUITT, NO. 17-1430 (4TH CIR.) – “CONSTRUCTIVE SUBMISSION” OF “NO TMDLS” BY WEST VIRGINIA – PETITION FOR REHEARING:** In February 2017, the District Court held that EPA must approve and/or disapprove West Virginia's "constructive submission" of no biological impairment/ionic toxicity Total Maximum Daily Loads (TMDLs) for 573 water bodies in the State. In June 2017, EPA and West Virginia negotiated a Memorandum of Agreement, which includes parameters under which the state will submit TMDLs for these water bodies. Relying on this agreement, EPA "conditionally approved" the submission of "no TMDLs," conditioned on the state meeting its obligations under the MOA, subject to the outcome of DOJ's appeal of the district court's determination in the Fourth Circuit. The case is now fully briefed. Various state-government and industry associations have filed *amicus* briefs in support of EPA's position. On appeal, EPA is arguing that (1) plaintiffs lacked standing to sue regarding all but 50 of the contested waters; (2) the district court misapplied the "constructive submission" doctrine to West Virginia, a state with a robust TMDL program that is working to complete the TMDLs at issue; and (3) the district court's decision was based on flawed factual assumptions about West Virginia's TMDL development efforts. Oral argument occurred on May 8, 2018 in Richmond, Virginia. The Court issued a decision on June 20, 2018.  
**Timing:** On August 1, Plaintiffs-Appellees filed a petition for panel rehearing. On that same day, the Court stayed the mandate pending the petition for rehearing.  
**Contact:** David Fotouhi, Deputy General Counsel, [Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)
3. **JULIANA v. UNITED STATES, NO. 15-01517 (D. OR.)/NO. 17-71692 (9TH CIR.). MANDAMUS PROCEEDINGS – CLIMATE-CHANGE LITIGATION WITH**

**CONSTITUTIONAL CLAIMS – DISTRICT COURT PROCEEDING:** This case is a broad-based challenge alleging that EPA and the US Government allowed excessive CO2 emissions from burning fossil fuel that have contributed to climate change. The district court denied the US motion to dismiss. On June 8, 2017, the district court denied our motion for interlocutory appeal and our request to stay the proceedings. On June 9, 2017, DOJ filed petition for mandamus with the Ninth Circuit seeking the same relief. On March 7, 2018, the Ninth Circuit denied the petition for a writ of mandamus. DOJ has filed motions for judgment on the pleadings and summary judgment for which oral argument was held on July 18, 2018. On July 5, DOJ filed a second petition for writ of mandamus and an emergency motion for a stay of discovery and trial with the Ninth Circuit. On July 17, the Ninth Circuit denied the request for a stay. On July 20, the Ninth Circuit denied the second petition for writ of mandamus. On July 17, DOJ filed an Application for Stay (or in the alternative a petition for mandamus or certiorari) with the Supreme Court, the plaintiffs filed their response on July 23. On July 30, the Supreme Court denied the requested stay.

**Timing:** District Court case is proceeding.

**Contact:** Justin Schwab, Deputy General Counsel, [Schwab.Justin@epa.gov](mailto:Schwab.Justin@epa.gov)

4. **MASSACHUSETTS RIVERS ALLIANCE v. EPA, NO. 17-cv-11825 (D. MASS.)— APA 705 STAY OF MASS. MS4 PERMIT—CASE STAYED:** Massachusetts Rivers Alliance and nine other environmental groups filed a complaint against the EPA in U.S. District Court in Massachusetts with regards to EPA’s June 29, 2017 action under Section 705 of the Administrative Procedure Act (“APA”) to postpone the effective date of the Massachusetts small MS4 (municipal separate storm sewer system) general permit by one year, from July 1, 2017 to July 1, 2018. Multiple parties had already challenged the general permit in the First Circuit and the D.C. Circuit Court of Appeals; the cases have been transferred and consolidated in the D.C. Circuit, and we are now awaiting its decision on whether to hold those cases in abeyance indefinitely to allow for the parties to pursue court-sponsored alternative dispute resolution. Briefing concluded in January of 2018. A status conference occurred on July 30 after which time the court stayed the case until October. Petitioners have indicated that they intend to move for voluntary dismissal of the case at that time.

**Timing:** A status conference is set for October 22, 2018.

**Contact:** David Fotouhi, Deputy General Counsel, [Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)

5. **SAFER CHEMICALS HEALTHY FAMILIES v. EPA, No. 17-72260 (9TH Cir.) – CHALLENGE TO TSCA PRIORITIZATION RULE AND RISK EVALUATION RULE – RESPONSE BRIEF DUE:** On November 27, 2017, the Ninth Circuit denied EPA’s motion to transfer the petitions for review of the TSCA prioritization rule to the Fourth Circuit. The court consolidated the various challenges to the TSCA framework rules and then issued a briefing schedule. Petitioners filed their opening brief on April 16, 2018.

**Timing:** EPA’s response brief was filed on August 6.

**Contact:** David Fotouhi, Deputy General Counsel, [Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)